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5 Attorney for Plaintiff:
ELBERT MADISON
6
7

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10 ELBERT MADISON,
11 Plaintiff,

CASE NO. C04-2440 PVT
Civil Rights

12 ~~PROPOSED~~ DECREE AND ORDER

13 v.

14 ACAPULCO RESTAURANTS, INC.;
AAC FUNDING IV, LLC;
15 MANUFACTURER'S LIFE
INSURANCE CO. USA; DOES 1
16 through 25, Inclusive,

17 Defendants.
18 _____/

19
20 CONSENT DECREE AND ORDER

21 1. Plaintiff ELBERT MADISON ("Plaintiff") contends that
22 he filed this action to enforce provisions of the Americans
23 with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§ 12101 et
24 seq., and California civil rights laws against Defendants,
25 ACAPULCO RESTAURANTS, INC.; AAC FUNDING IV, LLC; MANUFACTURER'S
26 LIFE INSURANCE CO. USA; and DOES 1-25, Inclusive,
27 ("Defendants"). Plaintiff has alleged that Defendants violated
28 Title III of the ADA and sections 54.1 and 55 of the California

1 Civil Code, and sections 19955 et seq., of the California
 2 Health and Safety Code by failing to provide full and equal
 3 access to their public restaurant facilities at the ACAPULCO
 4 RESTAURANT in Santa Clara, California ("the Property") where
 5 plaintiff contends he was invited to attend a business lunch on
 6 December 11, 2003.

7 2. Defendants ACAPULCO RESTAURANTS, INC.; AAC FUNDING
 8 IV, LLC; and THE MANUFACTURER'S LIFE INSURANCE COMPANY deny
 9 these allegations and by entering into this Consent Decree and
 10 Order do not admit liability to the allegations in Plaintiff's
 11 Complaint filed in this action. The parties hereby enter into
 12 this Consent Decree and Order for the purpose of resolving this
 13 lawsuit without the need for protracted litigation, and without
 14 the admission of any liability.

15

16 **JURISDICTION:**

17 3. The parties to this consent decree agree that the
 18 Court has jurisdiction of this matter pursuant to 28 USC §1331
 19 for alleged violations of the Americans with Disabilities Act
 20 of 1990, 42 USC 12101 et seq. and pursuant to pendant
 21 jurisdiction for violations of California Health & Safety Code
 22 §19955 et seq., including §19959; Title 24 California Code of
 23 Regulations; and California Civil Code §§54; 54.1; §54.3; and
 24 55.

25 4. In order to avoid the costs, expense, and uncertainty
 26 of protracted litigation, the parties to this consent decree
 27 agree to entry of this Order to resolve all claims raised in
 28 the First Amended Complaint filed with this Court on January

12, 2005. Accordingly, they agree to the entry of this Order without trial or further adjudication of any issues of fact or law concerning plaintiff's claims.

WHEREFORE, the parties to this consent decree hereby agree and stipulate to the Court's entry of this Consent Order, which provides as follows:

SETTLEMENT OF INJUNCTIVE RELIEF:

5. This Order shall be a full, complete, and final disposition and settlement of Plaintiff's claims against Defendants that have arisen out of the subject Complaint. The parties agree that there has been no admission or finding of liability or violation of the ADA and/or California civil rights laws.

6. The parties agree and stipulate that the corrective work will be performed in compliance with the standards and specifications for disabled access as set forth in the California Code of Regulations, Title 24-2 and Americans with Disabilities Act Accessibility Guidelines, unless other standards are specifically agreed to in this Consent and Order:

a) Remedial Measures: The injunctive relief agreed upon by the Parties is attached as **Attachment A** to this Consent Decree, and is incorporated herein by reference as if fully set forth in this document. Defendants agree to undertake the injunctive relief on the terms as set forth in **Attachment A**.

DAMAGES, ATTORNEY FEES, LITIGATION EXPENSES, AND COSTS:

7. The parties have reached an agreement regarding

1 plaintiffs' claims for statutory, actual, and personal injury
 2 damages in this matter, as well as plaintiff's claims for
 3 attorney fees, litigation expenses and costs. Defendants will
 4 pay plaintiff's statutory, actual, and personal injury damages
 5 and his attorney fees, litigation expenses and costs in the
 6 amount of \$97,500 as full and final resolution of plaintiff's
 7 claims for all damages, attorney fees, litigation expenses and
 8 costs prayed for in his Complaint. Payment shall be made in
 9 the form of a check made to "Paul L. Rein in Trust for Elbert
 10 Madison" no later than June 30, 2005. A dismissal of the
 11 action with prejudice will be filed within 14 days of receipt
 12 of payment or the entry of this Order by the Court, whichever
 13 occurs later.

14
 15 **ENTIRE CONSENT ORDER:**

16 8. This Consent Order, and any appendices attached,
 17 constitutes the entire agreement between the parties on the
 18 matters of injunctive relief, damages, attorneys fees,
 19 litigation expenses and costs, and no other statement, promise,
 20 or agreement, either written or oral, made by any of the
 21 parties or agents of any of the parties, that is not contained
 22 in this written Consent Order, shall be enforceable regarding
 23 the matters described herein.

24
 25 **CONSENT ORDER BINDING ON PARTIES AND SUCCESSORS IN INTEREST:**

26 9. This Consent Order shall be binding on Plaintiff
 27 ELBERT MADISON, Defendants, ACAPULCO RESTAURANTS, INC.; AAC
 28 FUNDING IV, LLC; THE MANUFACTURER'S LIFE INSURANCE COMPANY; and

1 any successors in interest. The parties have a duty to so
2 notify all such successors in interest of the existence and
3 terms of this Consent Order during the period of the Court's
4 jurisdiction of this consent decree.

5
6 **MUTUAL RELEASE AND WAIVER OF CIVIL CODE SECTION 1542:**

7 10. Except for all obligations required in this Consent
8 Decree, Plaintiff, on the one hand, and Defendants, on the
9 other hand, and on behalf of each, their respective agents,
10 representatives, predecessors, successors, heirs, partners and
11 assigns, releases and forever discharges each other opposing
12 party as titled in this action, and all officers, directors,
13 shareholders, subsidiaries, joint venturers, stockholders,
14 partners, parent companies, employees, agents, attorneys,
15 insurance carriers, heirs, predecessors, and representatives of
16 each other opposing Party, from all claims, demands, actions,
17 and causes of action of whatever kind or nature, presently
18 known or unknown, arising out of or in any way connected with
19 the Lawsuit which may exist as between Plaintiff, on the one
20 hand, and Defendants on the other hand.

21 11. Each of the parties to this Consent Decree
22 understands and agrees that there is a risk and possibility
23 that, subsequent to the execution of this Consent Decree, any
24 or all of them will incur, suffer, or experience some further
25 loss or damage with respect to the Lawsuit which are unknown or
26 unanticipated at the time this Consent Decree is signed.
27 Except for all obligations required in this Consent Decree, the
28 parties intend that this Consent Decree apply to all such

1 further loss related to the Lawsuit, except those caused by the
2 parties subsequent to the execution of this Consent Decree.
3 Therefore, except for all obligations required in this Consent
4 Decree, this Consent Decree shall apply to and cover any and
5 all claims, demands, actions and causes of action as between
6 Plaintiff, on the one hand, and Defendants on the other hand,
7 related to the Lawsuit, whether the same are known, unknown or
8 hereafter discovered or ascertained, and the provisions of
9 Section 1542 of the California Civil Code are hereby expressly
10 waived. Section 1542 provides as follows:

11 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
12 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT
13 THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM
14 MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE
15 DEBTOR.
16

17 **TERM OF THE CONSENT ORDER:**

18 12. This Consent Order shall be in full force and effect
19 for a period of six (6) months after the date of entry of this
20 Consent Order, or until such time as the injunctive relief
21 contemplated by the this order is completed. The Court shall
22 retain jurisdiction of this action to enforce provisions of
23 this Order for six (6) months after the date of this Consent
24 Decree, or until the injunctive relief contemplated by this
25 Order is completed, whichever occurs later.
26
27
28

SEVERABILITY:

13. If any term of this Consent Decree and Order is determined by any court to be unenforceable, the other terms of this Consent Decree and Order shall nonetheless remain in full force and effect.

SIGNATORIES BIND PARTIES:

14. Signatories on the behalf of the parties represent that they are authorized to bind the parties to this Consent Decree and Order.

Dated: June 30, 2005


ELBERT MADISON

Dated: _____, 2005

ACAPULCO RESTAURANTS, INC.

Dated: _____, 2005

AAC FUNDING IV, LLC

Dated: _____, 2005

THE MANUFACTURER'S LIFE INSURANCE
COMPANY

1 SEVERABILITY:

2 13. If any term of this Consent Decree and Order is
3 determined by any court to be unenforceable, the other terms of
4 this Consent Decree and Order shall nonetheless remain in full
5 force and effect.

6
7 SIGNATORIES BIND PARTIES:

8 14. Signatories on the behalf of the parties represent
9 that they are authorized to bind the parties to this Consent
10 Decree and Order.

11
12
13 Dated: _____, 2005

14 ELBERT MADISON

15
16 Dated: _____, 2005

17 ACAPULCO RESTAURANTS, INC.

18
19 Dated: 28 JUNE, 2005

20 *Regina J. Perry*
21 AAC BONDING IV, LLC

22 Dated: _____, 2005

23 THE MANUFACTURER'S LIFE INSURANCE
24 COMPANY

08-17-05 15:56 From-LAW OFFICES

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08/17/05 WED 16:34 FAX 418 926 5509

MANULIFE R.E.

010

SEVERABILITY:

13. If any term of this Consent Decree and Order is determined by any court to be unenforceable, the other terms of this Consent Decree and Order shall nonetheless remain in full force and effect.

SIGNATORIES BIND PARTIES:

14. Signatories on the behalf of the parties represent that they are authorized to bind the parties to this Consent Decree and Order.

Dated: _____, 2005

ELBERT MADISON

Dated: _____, 2005

ACAPULCO RESTAURANTS, INC.

Dated: _____, 2005

AAC FUNDING IV, LLC

Dated: Aug 17, 2005

 THE MANUFACTURER'S LIFE INSURANCE
 COMPANY

LAW OFFICE OF
 PAUL L. REIN
 210 LAURENCE ST., SUITE A
 WASHINGTON, LA 70079-3003
 (504) 313-3001

Consent Decree and Order:
 Case No. C04-2440 PVT

- 7 -

F:\The Manufacturer's Life Insurance Company\081705\0009

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Dated: June __, 2005

APPROVED AS TO FORM:

Dated: ~~June~~ 17, 2005

Julie McLean
Attorneys for Plaintiff
ELBERT MADISON

/ / /


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Consent Decree and Order:
Case No. C04-2440 PVT

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Dated: July 8 2005

KELLY F. CANBY
ROBERTS, RASPE & BLANTON, LLP


Attorneys for Defendants
ACAPULCO RESTAURANTS, INC.; AAC
FUNDING IV, LLC; THE
MANUFACTURERS LIFE INSURANCE
COMPANY

ORDER

Pursuant to stipulation, and for good cause shown, IT
IS SO ORDERED.

Dated: 10/3/05


HON. PATRICIA V. TRUMBULL
UNITED STATES MAGISTRATE JUDGE

Attachment A to Consent Decree and Order
ELBERT MADISON v. ACAPULCO RESTAURANTS, INC., et al.
CASE NO. C04-2440 PVT
Page 1 of 2

The following injunctive relief is agreed upon between the parties as resolution to plaintiff's claims for injunctive relief as set forth in the First Amended Complaint filed on January 12, 2005 in the United States District Court, Northern District, entitled ELBERT MADISON v. ACAPULCO RESTAURANTS, INC.; AAC FUNDING IV, LLC; MANUFACTURERS LIFE INSURANCE CO USA; Case No. C04-2440 PVT.

The parties agree that the corrective work described in this Attachment A, will be performed in compliance with the California Code of Regulations, Title 24-2 and Americans with Disabilities Act Accessibility Guidelines, unless other standards are specifically agreed to in this Consent Decree and Order. Included with Attachment A is a set of conceptual drawings prepared by plaintiff's consultants for acceptable barrier removal solutions. Defendants may deviate from plaintiff's suggested conceptual drawings if they provide equivalent disabled access that complies with ADAAG and California Title 24 building standards.

1. **Parking:** Defendants will provide two (2) fully compliant disabled accessible parking spaces as close as practicable to the accessible entrance, one of which will be configured and designated a van accessible parking space. Signage which complies with Title 24 and ADAAG standards will be installed, and an accessible path of travel will be provided and marked from each of the accessible parking spaces to the accessible entrance to the Restaurant. (See, for example, Drawing #1)

2. **Path of Travel from Public Right-of-Way:** Defendants will provide an accessible path of travel from the public sidewalk to the accessible entrance of the Restaurant by marking a path of travel from the public sidewalk to the accessible route.

3. **Accessible Entrance:** Defendants will provide an accessible and code-compliant public entrance to the Restaurant in one of the following ways: (1) remodel the existing public entrance so that it is accessible and compliant with applicable provisions of ADAAG and Title 24 Building Standards; or (2) according to either the conceptual drawings prepared by plaintiff's consultant and attached hereto as Group Exhibit 1; or (3) by means of a ramp, lift or elevator that provides an equivalent accessible entrance. The accessible entrance will remain unlocked during business hours and have directional signage and provide for telephone connection to the hostess for assistance if needed. If applicable, directional signage will also be installed at the beginning of the inaccessible entrance directing disabled persons to the accessible entrance. Employees will be trained as to the location and use of the accessible entrance and provide assistance as needed to disabled persons. (See, for example, Drawings #2 and 3)

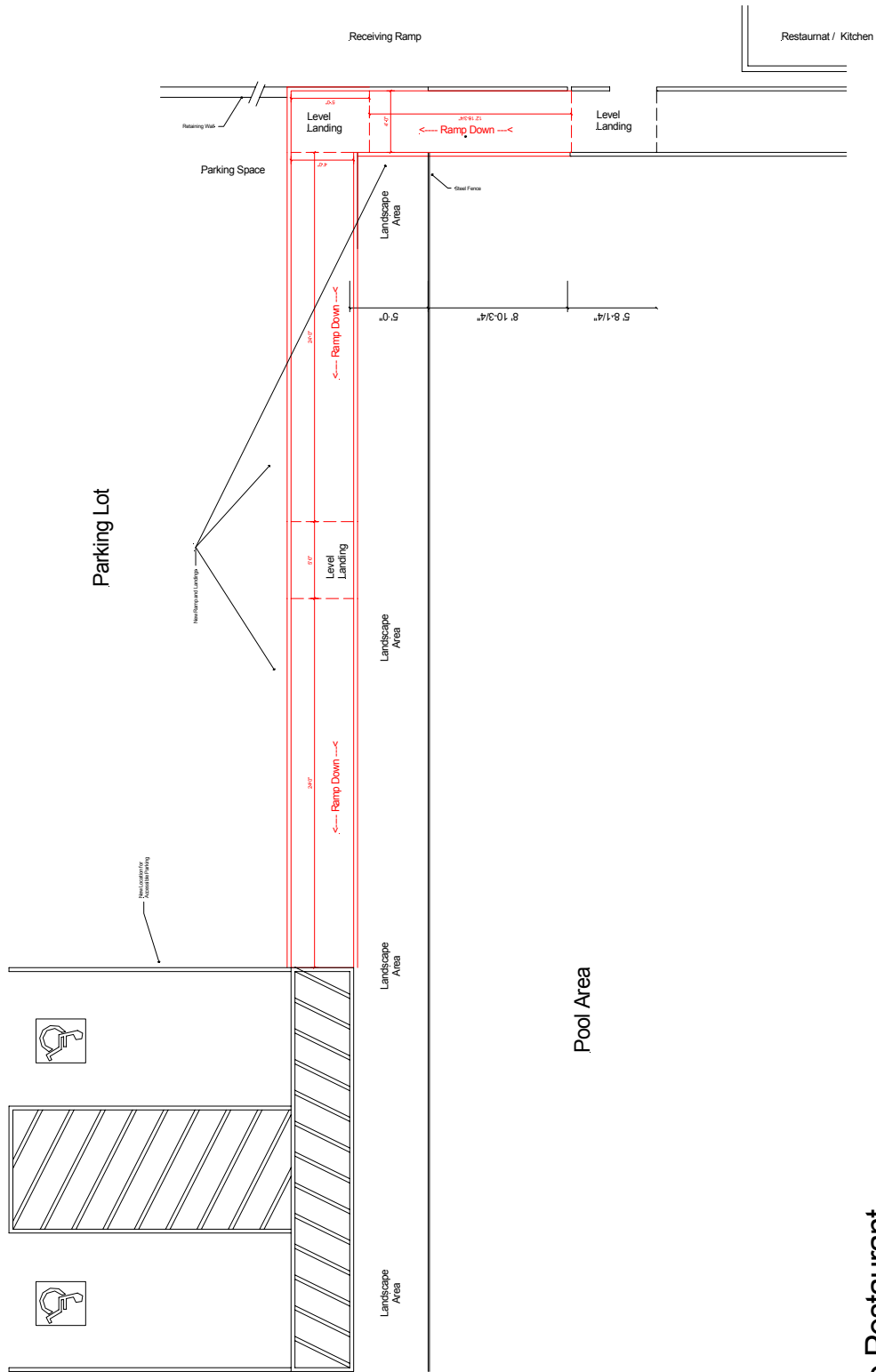
Attachment A to Consent Decree and Order
ELBERT MADISON v. ACAPULCO RESTAURANTS, INC., et al.
CASE NO. C04-2440 PVT
Page 2 of 2

4. Restrooms: Defendants will provide accessible restrooms in one of the following ways: (1) remodel the existing customer restrooms to be compliant with applicable provisions of ADAAG and California Title 24 Building Standards; or (2) provide one unisex accessible restroom by renovating an employee restroom consistent with the conceptual drawings prepared by plaintiff's consultant and attached hereto; or (3) install an equivalent code compliant unisex accessible restroom elsewhere in the Restaurant. If applicable, directional signage will be provided at the entrance of the inaccessible restrooms directing disabled persons to the unisex accessible restroom. Signage in compliance with the ADA and California Title 24 will be installed on the door(s) of the accessible restroom(s). (See, for example, Drawings # 4 and 5)

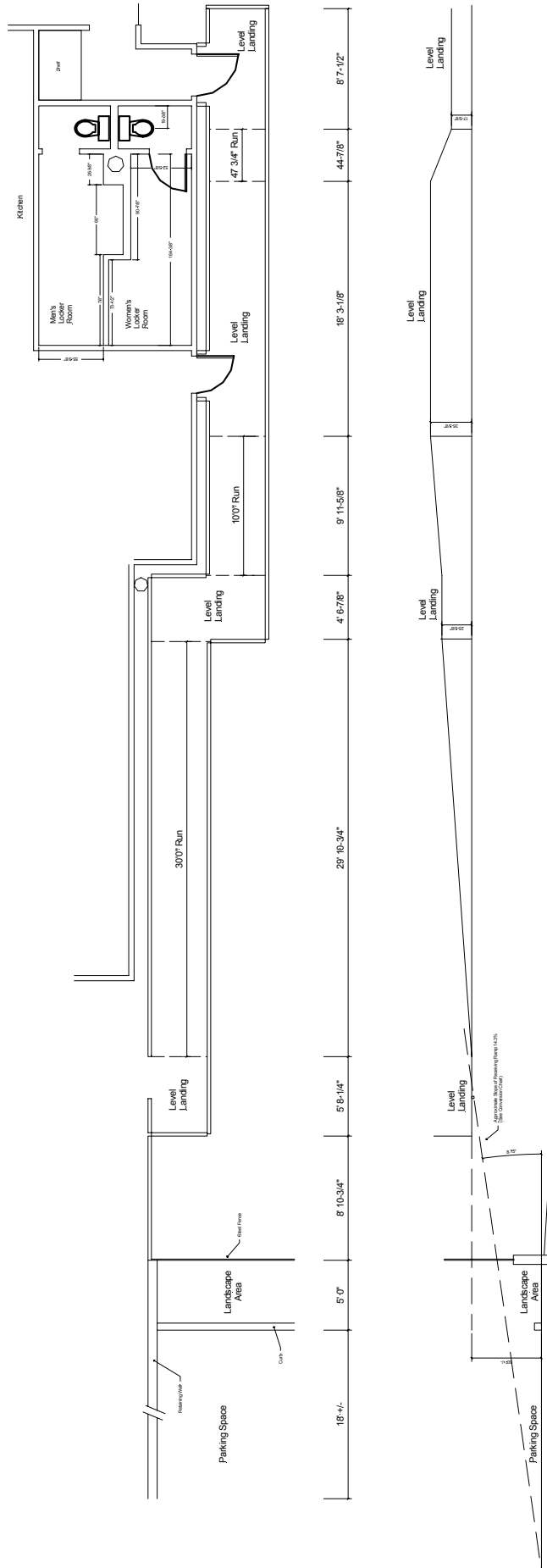
5. Interior Path of Travel Between Entrance/Bar and Lower Dining Area: Defendants will provide a ramp or lift to connect the upper and lower dining/bar areas within the Restaurant consistent with the conceptual drawings prepared by plaintiff's consultant and attached hereto, or by installing an equivalent code compliant ramp or lift elsewhere in the Restaurant that allows for an accessible path of travel between the lower dining area and the upper Bar area. (See, for example, Drawing # 6)

6. Maintenance of Accessible Features: Defendants will maintain their accessible facilities in working order, including ramps, lifts, telephone and accessible restroom for ready use by disabled persons, except when out of service for maintenance.

7. Timing: Defendants will submit building applications to the appropriate public entities, for such work as requires building permits within 90 days, with construction to begin within 30 days of obtaining permit approval, and completed within 6 months of obtaining approval. In the event that defendants are unable to comply with the deadlines for submitting permits or completion of construction, defendants will notify plaintiff's counsel in writing within 14 days of defendant's inability to comply with the terms of this Consent Decree and Order. Plaintiff agrees not to file a motion to compel within 30 days of such notice to permit the parties to negotiate resolution of the missed deadlines.

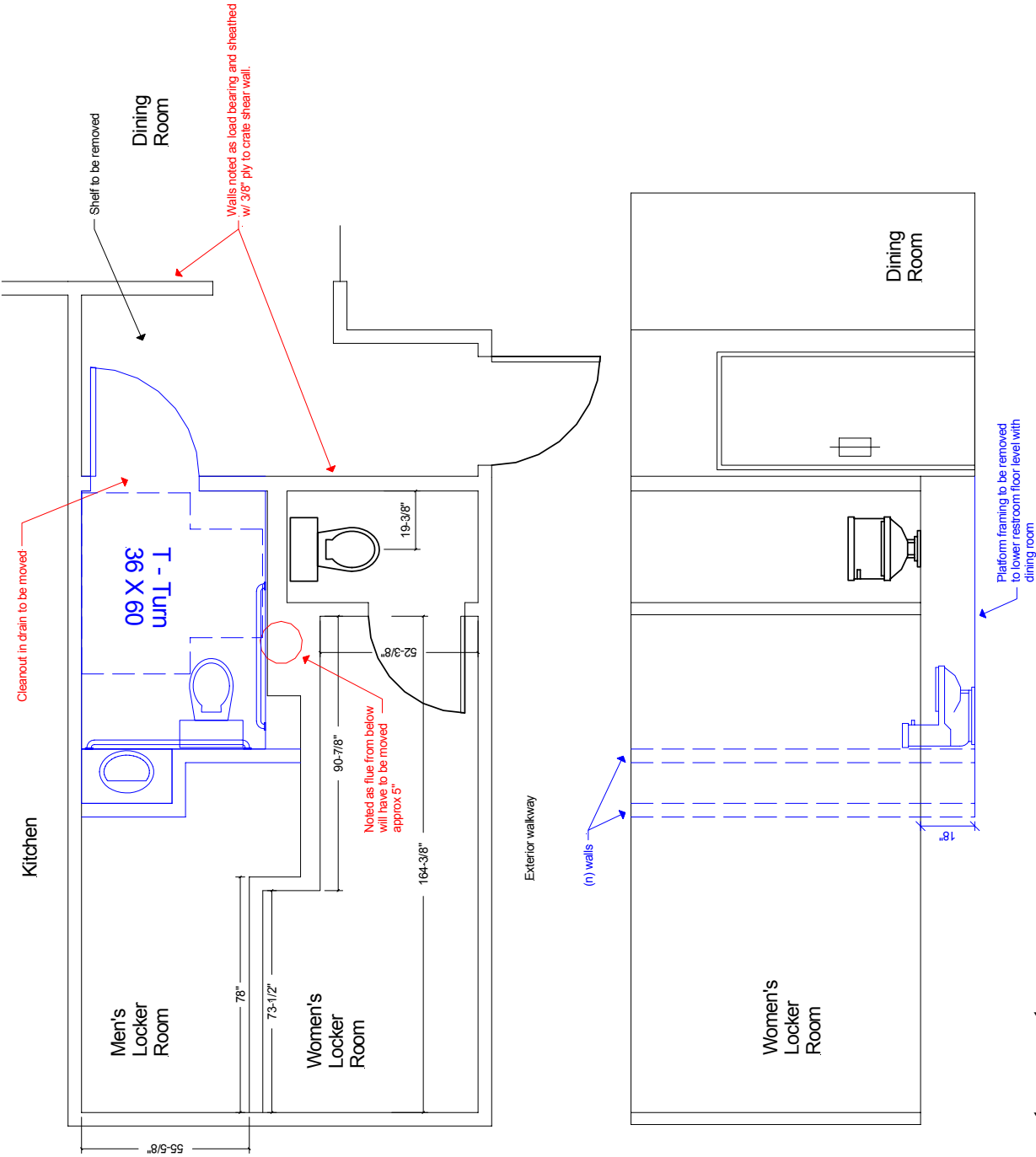


**Acapulco Restaurant
Santa Clara, CA
Proposed Ramp and Accessible Parking Spaces at Parking Area**

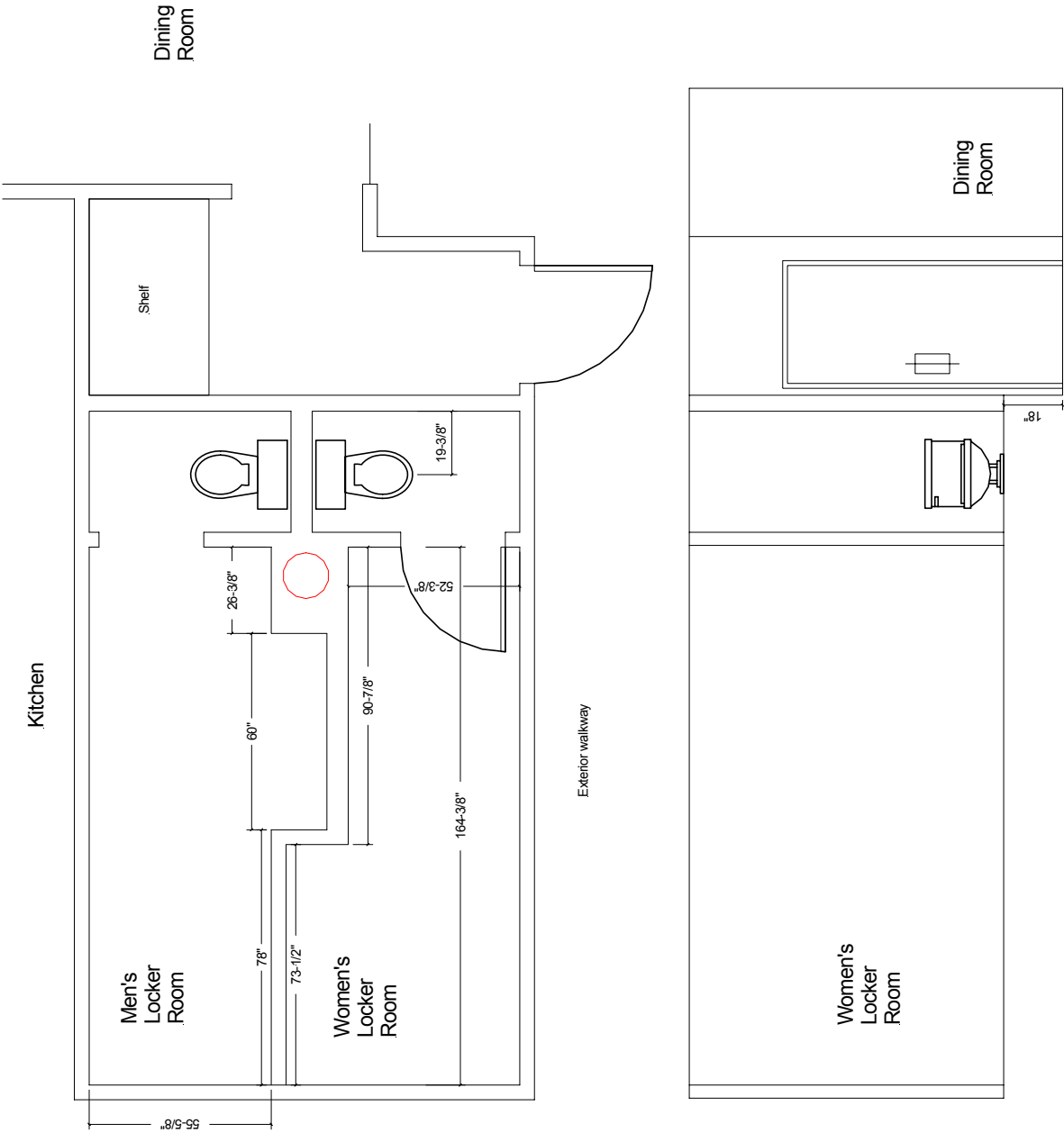


Acapulco Restaurant
Santa Clara, CA
Existing Ramp at South Elevation (Kitchen / Dining)

Drawing # 2



Acapulco Restaurant
Santa Clara, CA
Proposed Accessible Restroom at Locker Rooms



Acapulco Restaurant
Santa Clara, CA
Existing Restrooms at Locker Rooms

Acapulco Restaurant
Santa Clara, CA
Proposed Interior Ramp at Dining Room 2A

